

OGC HAS REVIEWED

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24 May 1950

Mr. W. D. Driscoll
Deputy Director
Bureau of Employees' Compensation
Federal Security Agency
Fourth Street and Independence Avenue, S.W.
Washington, D. C.

Dear Mr. Driscoll:

Pursuant to our conversation today, I am writing to request an interpretation of Section 7 (a) of the Federal Employees' Compensation Act of 1916 as amended. Some of our employees, as you are aware, are engaged in activities where they are obliged to accept hazards above and beyond those normally encountered in Federal employment. In order to make this type of work more attractive and to compensate the risk, we are contemplating the extension of some additional benefits for them or their survivors. First, however, we want to be certain that the proposed benefits would not be nullified by certain provisions of your Act. Your interpretation of the Act would be very much appreciated.

We are primarily concerned with Section 757 (a) of Title 5, USCA, which reads in pertinent part:

"Provided, That whenever any person is entitled to receive any benefits under sections 751-791 and 793 of this title by reason of his injury, or by reason of the death of an employee as defined in section 790 of this title, and is also entitled to receive from the United States any payments or benefits (other than the proceeds of any insurance policy) by reason of such injury or death under any other Act of Congress because of service by him (or in the case of death, by the deceased) as an employee, as so defined, such person shall elect which benefits he shall receive. Such election shall be made within one year after the injury or death or such further time as the Administrator may for good cause allow, and when made shall be irrevocable unless otherwise provided by law."

The types of benefits which we are contemplating are:

1. Payment of a lump sum death gratuity equivalent to 6 months' salary, and/or

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2. Additional annual payments to the employee, provided he utilizes them to purchase insurance from the War Agencies Employees' Protective Association, or

3. Payment of premiums on War Agencies Employees' Protective Association insurance directly by the Agency.

We would like to know if the payment indicated under number 1 above is in conflict with the quoted provision of your Act, and whether an election would be required. If an election is required, would it be final and binding upon the beneficiary for all purposes?

If insurance is purchased by the employee from the NAEPA, is this insurance of the type excluded from the restrictions of your Act?

If the insurance premiums are paid directly by the Agency, would that operate to bring private insurance within the scope of "benefits" received from the United States which would then require an election on the beneficiary's part before accepting either the insurance proceeds or compensation under your Act?

Finally, is National Service Life Insurance within the "benefits" received from the United States which would require an election under your Act? If your answer is affirmative, would it be affected when the policy had been converted and now has a cash surrender value?

We would be grateful for any comments you can make in regard to this situation and any aspects which are not touched by the questions above. The ready and able cooperation which you have continued to extend us in the irregular problems peculiar to our Agency has always been very helpful.

Sincerely yours,

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cc: Subject
Chrono

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